

CALIFORNIA DEPARTMENT OF INSURANCE  
LEGAL DIVISION

Teresa R. Campbell, Bar No. 162105  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105  
Telephone: 415-538-4126  
Facsimile: 415-904-5490

Attorneys for John Garamendi,  
Insurance Commissioner

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of

**GEICO GENERAL  
INSURANCE COMPANY,  
GEICO, GEICO CASUALTY  
COMPANY, AND GEICO  
INDEMNITY COMPANY**

Respondents.

File No. UPA 05048291

**ORDER TO SHOW CAUSE AND  
STATEMENT OF CHARGES; NOTICE  
OF MONETARY PENALTY**

(Insurance Code §§704(b), 790.05 and  
790.035)

WHEREAS, the Insurance Commissioner of the State of California (hereafter, "the Commissioner") has reason to believe that GEICO GENERAL INSURANCE COMPANY, GEICO, GEICO CASUALTY COMPANY, AND GEICO INDEMNITY COMPANY (hereinafter "Respondents") have engaged in or is engaging in this State in the unfair methods of competition or unfair or deceptive acts or practices set forth in the STATEMENT OF CHARGES contained herein, each falling within Section 790 et seq. of the California Insurance Code ("CIC");

WHEREAS, the Insurance Commissioner has reason to believe that a proceeding with respect to the alleged acts of Respondent would be in the public interest;

NOW, THEREFORE, and pursuant to the provisions of CIC § 790.05, Respondent is ordered to appear before the Commissioner on **March 15-16, 2006 at Office of Administrative**

1 **Hearings, 1515 Clay Street, Suite 206, Oakland, California, at 9:00 A.M.**, and show cause, if  
2 any cause there be, why the Commissioner should not issue an Order to said Respondent  
3 requiring Respondent to Cease and Desist from engaging in the methods, acts, and practices set  
4 forth in the STATEMENT OF CHARGES contained herein in Paragraphs 2 through 5 and  
5 imposing the penalties set forth in CIC Sections 790.035 and 704(b) as requested in the Petition  
6 for Discipline and Order, herein.

7  
8 **JURISDICTION AND PARTIES**

9 1. Respondents are, and at all relevant times have been, the holders of a  
10 Certificate of Authority issued by the Commissioner and is authorized to transact the business of  
11 insurance in California.

12 **STATEMENT OF CHARGES**

13 2. On or about October 28, 2004, Michele Secchitano made a third-party  
14 claim with Respondent GEICO CASULATY COMPANY for damage to her vehicle. The  
15 claimant took the vehicle to the shop of her choice. That shop wrote an estimate that was greater  
16 than Respondent's. The shop's labor rate is \$83 per hour. Respondent offered to pay only \$75  
17 per hour. Respondent stated that their refusal to pay the shop's rate was based on the belief that  
18 the shop's rates exceed the generally accepted labor rates fair competitive rate for the area.  
19 Respondent, however, had not conducted a labor rate survey to determine the prevailing labor rate  
20 in the area nor provided any other evidence or support that its adjustment of the repair facilities  
21 estimate was reasonable. Respondent's acts are in violation of CIC Section 790.03(h)(5) and  
22 Title 10, California Code of Regulation ("CCR"), Sections 2695.7(g) and 2695.8(f).  
23 Additionally, on October 22, 2004, Respondent advised the claimant that it would pay to have the  
24 vehicle moved to another repair facility if the claimant desired. The claimant, however, had not  
25 previously requested a referral to another repair facility. Respondent's acts are in violation of  
26 CIC section 758.5(c). [Claim No. 019405233 0101 012]

27 3. On or about March 21, 2005, Rubin Diaz made a first-party claim with  
28 Respondent GEICO CASULATY COMPANY for damage to his vehicle. The insured took the

1 vehicle to the shop of his choice. That shop wrote an estimate that was greater than  
2 Respondent's. The shop's labor rate is \$83 per hour. Respondent offered to pay only \$75 per  
3 hour. Respondent stated that their refusal to pay the shop's rate was based on the belief that,  
4 based on its experience with automobile claims and from its claims files in which agreed prices  
5 are negotiated, the shop's rates exceed the generally accepted labor rates for the area.  
6 Respondent's gathering of information to determine and set a specific prevailing auto body repair  
7 labor rate constitutes a survey pursuant to CCR section 2698.91. Respondent, however,  
8 Respondent did not submit the survey to the Department, nor did it provide any evidence or  
9 support that its adjustment of the repair facilities estimate was reasonable. Respondent's acts are  
10 in violation of CIC Sections 758(c), 790.03(h)(5) and CCR, Sections 2695.7(g), 2695.8(f) and  
11 2698.91. [Claim No. 0225057020101019]

12 4. On or about May 26, 2005, Paul Haenel made a first-party claim with  
13 Respondent GEICO CASUALTY COMPANY for damage to his vehicle. The insured took the  
14 vehicle to the shop of his choice. That shop wrote an estimate that was greater than  
15 Respondent's. The shop's labor rate is \$83 per hour. Respondent offered to pay only \$75 per  
16 hour. Respondent stated that their refusal to pay the shop's rate was based on the belief that,  
17 based on its experience with automobile claims and from its claims files in which agreed prices  
18 are negotiated, the shop's rates exceed the generally accepted labor rates for the area.  
19 Respondent's gathering of information to determine and set a specific prevailing auto body repair  
20 labor rate constitutes a survey pursuant to CCR section 2698.91. Respondent, however,  
21 Respondent did not submit the survey to the Department, nor did it provide any evidence or  
22 support that its adjustment of the repair facilities estimate was reasonable. Respondent's acts are  
23 in violation of CIC Sections 758(c), 790.03(h)(5) and CCR, Sections 2695.7(g), 2695.8(f) and  
24 2698.91. [Claim No. 0273635680101014]

25 5. On or about October 6, 2004, Ezra Mann made a first-party claim with  
26 Respondent GEICO INDEMNITY COMPANY for damage to his vehicle. The insured took the  
27 vehicle to the shop of his choice. That shop wrote an estimate that was greater than  
28 Respondent's. The shop's labor rate is \$83 per hour. Respondent offered to pay only \$75 per

1 hour. Respondent stated that their refusal to pay the shop's rate was based on the belief that the  
2 shop's rates exceed the generally accepted labor rates for the area. Respondent, however, had not  
3 conducted a labor rate survey to determine the prevailing labor rate in the area nor provided any  
4 other evidence or support that its adjustment of the repair facilities estimate was reasonable.  
5 Respondent's acts are in violation of CIC Section 790.03(h)(5) and CCR, Sections 2695.7(g) and  
6 2695.8(f). Additionally, Respondent contacted the claimant by telephone and advised him that  
7 there was a difference between its estimate and the repair facility's estimate and that he may be  
8 responsible to pay the difference out of his pocket. The Respondent, however, failed to advise the  
9 claimant of its disputed liability and denial of part of her claim in writing. Respondent's acts are  
10 in violation of CCR Sections 2695.7(b)(1). [Claim No. 0219756780101014-01]

11           6. On or about December 3, 2004, Scott Sheldon made a first-party claim  
12 with Respondent GEICO INDEMNITY COMPANY for damage to his vehicle. The insured took  
13 the vehicle to the shop of his choice. That shop wrote an estimate that was greater than  
14 Respondent's. The shop's labor rate is \$86 per hour. Respondent offered to pay only \$75 per  
15 hour. Respondent stated that their refusal to pay the shop's rate was based on the belief that the  
16 shop's rates exceed the generally accepted labor rates for the area. Respondent, however, had not  
17 conducted a labor rate survey to determine the prevailing labor rate in the area nor provided any  
18 other evidence or support that its adjustment of the repair facilities estimate was reasonable.  
19 Respondent's acts are in violation of CIC Section 790.03(h)(5) and CCR, Sections 2695.7(g) and  
20 2695.8(f). Additionally, Respondent contacted the claimant by telephone and advised him that  
21 there was a difference between its estimate and the repair facility's estimate and that he may be  
22 responsible to pay the difference out of his pocket. The Respondent, however, failed to advise the  
23 claimant of its disputed liability and denial of part of her claim in writing. Respondent's acts are  
24 in violation of CCR Sections 2695.7(b)(1). [Claim No. 015145988 0101 030]

25           7. On or about December 19, 2004, Jewell McDaniel made a first-party claim  
26 with Respondent GEICO INDEMNITY COMPANY for damage to his vehicle. The insured took  
27 the vehicle to the shop of his choice. That shop wrote an estimate that was greater than  
28 Respondent's. The shop's labor rate is \$86 per hour. Respondent offered to pay only \$75 per

1 hour. Respondent stated that their refusal to pay the shop's rate was based on the belief that the  
2 shop's rates exceed the generally accepted labor rates for the area. Respondent, however, had not  
3 conducted a labor rate survey to determine the prevailing labor rate in the area nor provided any  
4 other evidence or support that its adjustment of the repair facilities estimate was reasonable.  
5 Respondent's acts are in violation of CIC Section 790.03(h)(5) and CCR, Sections 2695.7(g) and  
6 2695.8(f). Additionally, Respondent contacted the claimant by telephone and advised him that  
7 there was a difference between its estimate and the repair facility's estimate and that he may be  
8 responsible to pay the difference out of his pocket. The Respondent, however, failed to advise the  
9 claimant of its disputed liability and denial of part of her claim in writing. Respondent's acts are  
10 in violation of CCR Sections 2695.7(b)(1). [Claim No. 011295865 0101 128]

11 8. On or about April 24, 2005, Steven Farnell made a first-party claim with  
12 Respondent GEICO INDEMNITY COMPANY for damage to his vehicle. The insured took the  
13 vehicle to the shop of his choice. That shop wrote an estimate that was greater than  
14 Respondent's. The shop's labor rate is \$86 per hour. Respondent offered to pay only \$75 per  
15 hour. Respondent stated that their refusal to pay the shop's rate was based on the belief that,  
16 based on its experience with automobile claims and from its claims files in which agreed prices  
17 are negotiated, the shop's rates exceed the generally accepted labor rates for the area.  
18 Respondent's gathering of information to determine and set a specific prevailing auto body repair  
19 labor rate constitutes a survey pursuant to CCR section 2698.91. Respondent, however,  
20 Respondent did not submit the survey to the Department, nor did it provide any evidence or  
21 support that its adjustment of the repair facilities estimate was reasonable. Respondent's acts are  
22 in violation of CIC Sections 758(c), 790.03(h)(5) and CCR, Sections 2695.7(g), 2695.8(f) and  
23 2698.91. Additionally, Respondent contacted the insured by telephone and advised him that  
24 there was a difference between its estimate and the repair facility's estimate and that he may be  
25 responsible to pay the difference out of his pocket. The Respondent, however, failed to advise the  
26 claimant of its disputed liability and denial of part of her claim in writing. Respondent's acts are  
27 in violation of CCR Sections 2695.7(b)(1). [Claim No. 0235891570101013]  
28

1                   9.       On or about June 23, 2005, Vicki Johnson made a first-party claim with  
2 Respondent GEICO INDEMNITY COMPANY for damage to her vehicle. The insured took the  
3 vehicle to the shop of her choice. That shop wrote an estimate that was greater than  
4 Respondent's. The shop's labor rate is \$86 per hour. Respondent offered to pay only \$75 per  
5 hour. Respondent stated that their refusal to pay the shop's rate was based on the belief that,  
6 based on its experience with automobile claims and from its claims files in which agreed prices  
7 are negotiated, the shop's rates exceed the generally accepted labor rates for the area.  
8 Respondent's gathering of information to determine and set a specific prevailing auto body repair  
9 labor rate constitutes a survey pursuant to CCR section 2698.91. Respondent, however,  
10 Respondent did not submit the survey to the Department, nor did it provide any evidence or  
11 support that its adjustment of the repair facilities estimate was reasonable. Respondent's acts are  
12 in violation of CIC Sections 758(c), 790.03(h)(5) and CCR, Sections 2695.7(g), 2695.8(f) and  
13 2698.91. Additionally, Respondent contacted the insured by telephone and advised her that there  
14 was a difference between its estimate and the repair facility's estimate and that he may be  
15 responsible to pay the difference out of his pocket. The Respondent, however, failed to advise the  
16 claimant of its disputed liability and denial of part of her claim in writing. Respondent's acts are  
17 in violation of CCR Sections 2695.7(b)(1). [Claim No. 0278355110101014-01]

18                   10.       On or about April 8, 2005, Brian McBratney made a first-party claim with  
19 Respondent GEICO INDEMNITY COMPANY for damage to his vehicle. The insured took the  
20 vehicle to the shop of his choice. That shop wrote an estimate that was greater than  
21 Respondent's. The shop's labor rate is \$86 per hour. Respondent offered to pay only \$75 per  
22 hour. Respondent stated that their refusal to pay the shop's rate was based on the belief that,  
23 based on its experience with automobile claims and from its claims files in which agreed prices  
24 are negotiated, the shop's rates exceed the generally accepted labor rates for the area.  
25 Respondent's gathering of information to determine and set a specific prevailing auto body repair  
26 labor rate constitutes a survey pursuant to CCR section 2698.91. Respondent, however,  
27 Respondent did not submit the survey to the Department, nor did it provide any evidence or  
28 support that its adjustment of the repair facilities estimate was reasonable. Respondent's acts are

1 in violation of CIC Sections 758(c), 790.03(h)(5) and CCR, Sections 2695.7(g), 2695.8(f) and  
2 2698.91. Additionally, Respondent contacted the insured by telephone and advised him that  
3 there was a difference between its estimate and the repair facility's estimate and that he may be  
4 responsible to pay the difference out of his pocket. The Respondent, however, failed to advise the  
5 claimant of its disputed liability and denial of part of her claim in writing. Respondent's acts are  
6 in violation of CCR Sections 2695.7(b)(1). [Claim No. 0220815300101024]

7 11. On or about September 17, 2004, Mark Mezey made a first-party claim  
8 with Respondent GEICO GENERAL INSURANCE COMPANY for damage to his vehicle. The  
9 insured took the vehicle to the shop of his choice. That shop wrote an estimate that was greater  
10 than Respondent's. The shop's labor rate is \$83 per hour. Respondent offered to pay only \$75  
11 per hour. Respondent stated that their refusal to pay the shop's rate was based on the belief that  
12 the shop's rates exceed the generally accepted labor rates for the area. Respondent, however,  
13 Respondent did not submit the survey to the Department, nor did it provide any evidence or  
14 support that its adjustment of the repair facilities estimate was reasonable. Respondent's acts are  
15 in violation of CIC Sections 790.03(h)(5) and CCR, Sections 2695.7(g), 2695.8(f) and 2698.91.  
16 Additionally, Respondent contacted the insured by telephone and advised him that there was a  
17 difference between its estimate and the repair facility's estimate and that he may be responsible to  
18 pay the difference out of his pocket. The Respondent, however, failed to advise the claimant of  
19 its disputed liability and denial of part of her claim in writing. Respondent's acts are in violation  
20 of CCR Sections 2695.7(b)(1). Additionally, on September 20, 2004, Respondent advised the  
21 claimant that he could have his vehicle repaired at the shop of choice and most shops in the area,  
22 but not his shop of choice, charge \$75, the insurer's determined comparable rate. The claimant,  
23 however, had not previously requested a referral to another repair facility. Respondent's acts are  
24 in violation of CIC section 758.5 [Claim No. 018656834 0101 031]

25 12. On or about February 12, 2005, Margarita Carrasco made a first-party  
26 claim with Respondent GEICO GENERAL INSURANCE COMPANY for damage to her  
27 vehicle. The insured took the vehicle to the shop of her choice. That shop wrote an estimate that  
28 was greater than Respondent's. The shop's labor rate is \$86 per hour. Respondent offered to pay

1 only \$75 per hour. Respondent stated that their refusal to pay the shop's rate was based on the  
2 belief that the shop's rates exceed the generally accepted labor rates for the area. Respondent,  
3 however, Respondent did it provide any evidence or support that its adjustment of the repair  
4 facilities estimate was reasonable. Respondent's acts are in violation of CIC Sections  
5 790.03(h)(5) and CCR, Sections 2695.7(g), 2695.8(f) and 2698.91. Additionally, Respondent  
6 contacted the insured by telephone and advised her that there was a difference between its  
7 estimate and the repair facility's estimate and that she may be responsible to pay the difference  
8 out of his pocket. The Respondent, however, failed to advise the claimant of its disputed liability  
9 and denial of part of her claim in writing. Respondent's acts are in violation of CCR Sections  
10 2695.7(b)(1). Additionally, on February 18, 2005, Respondent advised the claimant that she  
11 could have her vehicle repaired at the shop of choice and most shops in the area, but not her shop  
12 of choice, charge \$75, the insurer's determined comparable rate. The claimant, however, had not  
13 previously requested a referral to another repair facility. Respondent's acts are in violation of  
14 CIC section [Claim No. 0151644240101065]

15 13. On or about January 30, 2004, Ingeborg DeLaCarta made a first-party  
16 claim with Respondent GEICO GENERAL INSURANCE COMPANY for damage to her  
17 vehicle. The insured took the vehicle to the shop of his choice. In connection with this claim,  
18 Respondent gathered information that it used to determine and set a specific prevailing auto body  
19 repair labor rate. Such a gathering constitutes a survey pursuant to CCR section 2698.91.  
20 Respondent, however, Respondent did not submit the survey to the Department. Respondent's  
21 acts are in violation of CIC Sections 758(c). [Claim No. 0093682600101011 ]  
22

23 **STATEMENT OF MONETARY PENALTY ORDER, AND STATEMENT OF**  
24 **POTENTIAL LIABILITY, PURSUANT TO CIC § 790 et. seq**

25 14. The facts alleged above in Paragraphs 2 through 13 show that Respondent  
26 did not attempt in good faith to effectuate prompt, fair and equitable settlement of claims in which  
27 liability had become reasonable clear, in violation of CIC Section 790.03(h)(5).  
28



1           15.     The facts alleged above in Paragraphs 2 through 13 constitute grounds,  
2 under CIC Section 790.05, for the Insurance Commissioner to order Respondent to cease and  
3 desist from engaging in such unfair acts or practices and to pay a civil penalty not to exceed five  
4 thousand dollars (\$5,000) for each act, or if the act or practice was willful, a civil penalty not to  
5 exceed ten thousand dollars (\$10,000) for each act as set forth under CIC Section 790.035.

6           16.     The facts alleged above in Paragraphs 2 through 13 show that Respondent  
7 have failed to carry out its contracts in good faith, constituting grounds for the Insurance  
8 Commissioner to suspend the Certificate of Authority of Respondent for a period not to exceed  
9 one year pursuant to CIC Section 704(b), or to impose a fine in an amount not exceeding  
10 \$55,000 in lieu of suspension pursuant to the authority of CIC Section 704.7.

11  
12                               **PETITION FOR DISCIPLINE AND ORDER**  
13

14           **WHEREFORE**, Petitioner prays for judgment against Respondent as follows:

15           1.     An Order to Cease and Desist from engaging in such unfair acts or practices in  
16 violation of CIC Section 790.03 as set forth above;

17           2.     For acts in violation of CIC Section 790.03 and the regulations promulgated  
18 pursuant to CIC Section 790.10, as set forth above, a civil penalty not to exceed five thousand  
19 dollars (\$5,000) for each act or, if the act or practice was willful, a civil penalty not to exceed ten  
20 thousand dollars (\$10,000) for each act.

21           3.     For acts in violation of CIC Section 704(b), suspension of Respondent's certificate  
22 of authority for not exceeding one year or a fine in the amount fifty-five thousand dollars  
23 (\$55,000) in lieu of suspension.

24     Dated: November 18, 2005 \_\_\_\_\_ JOHN GARAMENDI  
25   Insurance Commissioner

26  
27   By \_\_\_\_\_/s/  
28   Teresa R. Campbell  
   Staff Counsel